

Claim 1 and the claims that depend on Claim 1, including Claim 2-6, calls for a “soft cushion pad.” The application describes this soft cushion pad as being made of “soft yielding foam-like material” (application p. 8, lines 23-24.). On page 9, the material is again described as “soft and easily pulled aside or cut” (application p.9, lines 7-12) or that the material could be made of foam with tear-a-way sections (application p. 9, lines 9-12). Here, the term “easily” is used in accordance with its regular dictionary meaning. *Webster’s Ninth New Collegiate Dictionary* defined “easy” as “causing or involving little difficulty...” or “requiring or indicating little effort...” Consequently, “easily” used in the context of the claims that the soft cushion pad is made of material that “is easily cut” (Claim 2). Consequently, any soft cushioning material that is easily cut is a satisfactory material. Specific examples of tear-a-way foam are given in the disclosure (application p. 9, lines 9-12). The Applicant therefore traverses the conclusion of the Examiner that one of ordinary skill would not understand that “easily cut” here is used in its ordinary meaning to mean that using scissors that are ordinarily found in an operating room can, without “undue difficulty”, be used to cut or tear-a-way material of which the soft cushion pad is made. Applicant respectfully suggests the Examiner was correct in the first and final Office Actions in the original application when no objection was raised to the term “easily” when used in the claims. Moreover, the Applicant points out that Claim 11 uses the term “easily cut” is also used but no objection was raised to that claim because of this term.

Claims 3 and 10 were also objected to because of the language “easily” and “quickly” for Claim 3 or the term “quickly” for Claim 10. In Claims 3 and 10 these terms were used in reference to the means for attaching. To determine the meaning of the means for attaching references made to the specification (In Re Donaldson Co., Inc., 60 F. 3d. 1189, 29 U.S.P.Q. 2d. 1945 (1994)). Here, the specification describes that there are attachment tapes (specification p. 9, lines 17-18). It also describes as one embodiment a hook-and-eye attachment tape (Velcro like) (specification p. 4, lines 12-13). Consequently, it would be seen that the specification would have attachment tapes which could be of a hook-and-eye Velcro type material or other equivalent types of taping attachments which could use adhesives of minor adhesive qualities. For a claim made using the “means for” language, the specification defines the scope of the claims to be the specific means disclosed in the specification and any equivalents thereto. It is clear, for example, that a Velcro type attachment tape

would easily and readily attach and detach. Again, the term “easily” and the term “quickly” are used in the ordinary sense of those words and that the claims are read in light of the specification. Thus, the use of “easily” and “quickly” does not make these claims indefinite to one of ordinary skill in the art. Again, the Applicant respectfully suggests the Examiner was correct by not objecting to this language in the first and second, final, Office Actions in the original application.

### Claims Rejection 35 U.S.C. 103

The Examiner rejected Claims 1-6 under 35 U.S.C. 103(a) over Ogburn, U. S. Patent #2,245,293, in view of Witter, U. S. Patent #3,884,225, and Tari, U. S. Patent #4,662,366. The Examiner first reasons that Ogburn '293 shows “an arm protection apparatus (2).” Applicant traverses this conclusion of the Examiner. In truth, Ogburn is a restraining cuff. The Examiner goes on to state that Ogburn shows “...a soft cushion pad right arm section (19) positionable around the right arm of a patient...” Applicant traverses this conclusion of the Examiner regarding the teaching of Ogburn. Ogburn shows two cuff members (16 and 17) comprising “preferably a rectangular piece of heavy, relatively stiff leather” (Ogburn column 2, lines 1-3). Apparently, in order to protect the patient’s ankles or wrists, where these heavy cuffs are mounted, from injury from those cuffs, the cuffs (16 and 17) are padded (19). Thus, the padding (19) is apparently designed to prevent injury to the patient from the cuffs rather than from outside forces. For Claim 2, the Examiner goes on to reason that: “Said member is made of material that is easily cut.” The Examiner does not reference, and, indeed, cannot reference anything in the Ogburn patent which so discloses anything about the cuff members (16 and 17). In fact, they are made of heavy stiff leather. Applicant respectfully requests Examiner to give a column and line number in the Ogburn patent that discloses or suggests that the cuff members may be readily or easily cut. For Claim 3, the Examiner further concludes, regarding Ogburn, that there are “right and left means for readily attach and detach whereby said right and left arm sections may be easily and readily attached and detached from said central portion of said at least one member.” First, the Examiner notes in passing that the Applicant did not use the term “member” in his application and, insofar as the Examiner is referencing the Applicant’s Claim 1, the use of the term “member” is inappropriate. Ogburn does disclose that the cuffs (16 and 17) have slits (32) for slidable adjustment on the strap (11). However, there is no apparent means of attaching and detaching the cuff members (16 and 17) from

the central strap (11), contrary to the Examiner's conclusion that the "right and left arm sections may be quickly and easily attached and detached." While it is unclear from the application, it appears that the cuff members are permanently mounted on the central member (11). Applicant traverses the conclusion of the Examiner that Ogburn discloses means for readily attaching and detaching and respectfully requests the Examiner detail where in the Ogburn reference such means are disclosed.

The Examiner then notes that Ogburn '293 fails to teach a soft cushion pad, right and left arm sections comprising upper and lower sections foldable around the upper and lower parts of the patient's right and left arm, the soft cushion pad being radiolucent, and a soft cushion pad comprising first and second rectangular sections connected together forming a generally H-shaped pad with left arm upper section and right arm upper section, left arm lower section, right arm lower section comprising the legs of the "H" and where H-shaped pad has a width approximately equal to the length of a patient's torso. The Examiner then states that Witter '225 shows a cushion pad (20) positionable under a patient's body. The Examiner then states that Tari '366 shows arm support (10) for patient's arm comprising separate upper and lower assemblies (30 and 32) positionable about the upper and lower sections of the arms of a patient. The Examiner then goes on to reason that it would have been obvious to modify the central member (11) of the device shown by Ogburn '293 to include a soft cushion pad as taught desirable by Witter, concluding it would have been to enhance the comfort of a patient lying on the apparatus. The Examiner concludes, with regards to Claim 1, it would have been obvious to one of ordinary skill in the art to modify the device of Ogburn to provide upper and lower arm sections as taught by Tari to provide support for the patient's right and left arms respectively. However, the Examiner does not address the requirement of Applicant's Claim 1 of a soft cushion pad right arm upper section, soft cushion pad left arm upper section, a soft cushion pad right arm lower section, and a soft cushion pad left arm lower section. Consequently, the combination of Ogburn, Witter, and Tari still do not show singly or in combination disclosure left and right soft cushion pad sections to enfold and protect a patient's arms. Given the broadest interpretation, the Examiner concludes that it would have been obvious to provide a soft cushion pad for the "central member of the device shown by Ogburn" to provide padding on that central member. The Examiner is apparently referring to the wide strap

(11), which is referred to as a “base member” in the Ogburn patent. However, even modifying the base member or wide strap (11) by adding the Witter pad, still does nothing to provide soft cushion pad arm sections as is claimed in Claim 1 of this patent. Moreover, none of these patents disclose or teach the need for protecting the arms of a patient from outside pressure. The Ogburn, Witter, and Tari devices are all for positioning or restraining the arms of a patient. They are not for providing protection to the arms of a patient. It is only because of the teaching of this invention for arm protection that the Examiner would even consider the hard, leather cuffs of Ogburn as a “arm protection device.” Ogburn does not describe it as such in his patent and the Examiner has used the teaching of this patent in a classic hindsight reconstruction, which is prohibited by patent law and practice.

With regards to Claims 2 and 3, the Examiner does not specifically comment how the addition of Tari and Witter to Ogburn teach the additional limitations added by Claims 2 and 3. The Applicant has already discussed above the deficiencies of Ogburn for providing soft cushion arm sections that are easily cut and for providing soft cushion arm sections that readily attached and detach. Applicant incorporates by reference those arguments herein.

Regarding Claim 4 the Examiner states that: “Ogburn ‘293 broadly addresses a type of material suitable for the arm section cushion pads” (Column 2, line 4), concluding that it: “would have been obvious to one of ordinary skill in the art... to make them radiolucent.” Applicant traverses this conclusion of the Examiner: Ogburn does not discuss arm cushion pads at all, but rather discusses cushioning inside the hard leather cuffs (Column 2, line 4). The Tari device is, in fact, used during a radiographic procedure, specifically, an angiogram, but does not discuss the need for the Tari device to be radiolucent. The Witter device is a patient positioning device and again nothing is discussed about the need for radiolucent. In fact, each of these prior art devices are quite specific for use in quite specific circumstances and would not be utilized as a matter of course in surgery directed toward the central portion of a patient’s body. For these devices, there is no need or teaching for them to be radiolucent, and it is only by the teaching of this invention that the Examiner refers to the Witter fleece cushion (20) as a “radiolucent cushion pad.” The Applicant traverses this conclusion of the Examiner.

In regard to Claims 5 or 6, the Examiner takes the straps of Ogburn, Tari, and Witter and concludes that it is inherent that they have a width approximately equal to the length of a patient's torso. Here, the Applicant's invention is used to enclose a patient's arms essentially from the wrist to the shoulders. Consequently, the width of the pad is necessarily the length of a patient's torso. Nothing in Ogburn, Tari, or Witter show or suggest any need for those dimensions. Additionally, most devices are made as simply and inexpensively as possible. Because there is no need in Ogburn, Tari, or Witter for their devices to be the length of the patient's torso, it goes against standard design principles to complicate the devices and to add to the expense of manufacture by adding extra material to make the devices the required dimensions. Consequently, there is nothing inherent in the Ogburn, Tari, or Witter devices that suggest the need for dimensions as claimed and taught in the Applicant's invention and standard principles of design teach away from unnecessarily making the devices larger, heavier, more complex, and more expensive than is required by their function. For these reasons, the Examiner concludes that the dimensions taught and claimed by the Applicant's invention are inherent in the Ogburn, Tari, and Witter references can only be based on the teaching of the Applicant's own invention, since it is neither taught, suggested, or useful in these references singly or in combination.

Claims 7-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ogburn '293, in view of Witter '225. The Examiner starts by again concluding that Ogburn '293 "shows an arm protection apparatus." Applicant will not repeat the comments made above traversing that conclusion of the Examiner, but incorporates them by reference herein. The Examiner again concludes that there is "at least one arm section cushion pad (19)." The Applicant again traverses that conclusion of the Examiner and incorporates by reference herein the arguments made above. In fact, the Ogburn device discloses hard leather cuffs to fit around the ankles or wrist of a patient. It is not a cushion pad. The cushioning (19) of the Ogburn device is contained within the hard leather outer covering. The Ogburn device cushion no more makes the leather cuff a "cushion pad" than the soft cushion seating in a M1A Abrams tank makes the Abrams tank a soft cushion pad. The Examiner goes on to state, regarding Claim 8, the Ogburn teaches a central member sized where there is a plurality of arm sections. This is not accurate. Ogburn teaches a hard leather cuff for each

arm, but a plurality of cushion pad arm sections. Regarding Claim 10 the Examiner concludes Ogburn discloses means for readily attaching and detaching a plurality of arm sections to secure a patient's arms. Applicant incorporates by reference herein the comments made regarding Claims 2 and 3 above. Ogburn does disclose means for adjusting the size of the cuff to fit different size wrists using a variety of strap arrangements. Ogburn does not discuss whether these can be quickly and easily detached. In fact, the basic premise of the Ogburn patent to restrain a patient's arm teaches away from cuffs that are readily attached and detached since, if they were readily attached and detached, the patient would readily be able to remove his arms from those cuffs, defeating the restraint purposes that is basic to the Ogburn patent. Regarding Claim 11 Applicant incorporates by reference herein the comments made about the Ogburn patent deficiencies regarding it being easily cut. The Ogburn cuffs are made of hard leather. There is nothing in the Ogburn patent that suggest they should be easily cut and its basic premise of restraining of a psychotic patient teaches away from materials that could be easily cut. Regarding Claim 12 the Examiner simply states that Ogburn teaches two arm sections with each arm section sized to fit around approximately one-half of a patient's arm. In fact, Ogburn does teach a left wrist and a right wrist cuff. It does not teach four arm cushion pads, the upper and lower arm right cushion pads, each fitting around approximately one-half of a patient's arm, and the upper and lower left arm cushion pad sections each fitting around approximately one-half each of the patient's left arm. The Examiner provides no explanation of how the cuffs of the Ogburn patent multiply themselves by a factor of two and change their positions to cover a patient's arm. Without such an explanation by the Examiner, Applicant necessarily traverses this conclusion.

The Examiner adds Witter '225 for a cushion pad underneath the patient, indicating the motivation would have been to enhance the comfort of the patient. If the Applicant's invention stopped with a soft cushion pad only underneath a patient, then this point might be well taken. However, the Applicant's invention is not designed only to enhance the comfort of a patient, although it may do so, but is designed to protect the arms of a patient from outside pressure during operations, as has been explained in responses to previous Office Actions, which explanations are incorporated by reference herein. Combining Witter with Ogburn does not teach soft cushion pads around a patient's arms to protect the patient's arms from outside pressure. But for the teaching of

this application, there would be no reason to consider combining Witter with Ogburn.

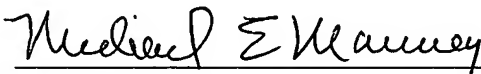
Regarding Claim 9, the Examiner again concludes that it is obvious to make the invention radiolucent. Applicant incorporates by reference herein the arguments made above for these conclusions made by the Examiner in regard to Claim 4 and will not repeat them herein.

Claim 12 is rejected as unpatentable over Ogburn, in view of Witter, and further in view of Tari. The Examiner reasons that Tari adds upper arm support and lower arm support for both the left and right arms of a patient. However, the Tari patent only discloses straps to fit around a patient's arm and not cushion pads. Moreover, Claim 12 requires four cushion pads, each approximately sized to fit around one-half of the patient's torso. This is not disclosed by Witter and Tari, and adding Tari to Ogburn and Witter does not remedy this essential deficiency of Ogburn and Witter for Claim 12.

#### Conclusion

The Applicant has answered each rejection or objection to the Applicant's Claims. It is therefore believed all Claims are in a condition for allowance and the same is respectfully requested.

This the 26 day of Sept., 2005.

  
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